

REMARKS

Claims 1-34 are currently pending. Claims 35-79 were previously canceled without prejudice. However, Applicant reserves the right to pursue the subject matter of the canceled claims by separate prosecution of this or another related application. Independent claims 1, 15 and 29 have been amended as suggested by the Examiner during the formal interview on March 8, 2007. Applicant respectfully requests reconsideration of the claims in view of these amendments and the following remarks.

Interview Summary

Applicant acknowledges with appreciation the courtesy extended by the Examiner during the formal interview with the Applicant's attorney of record on March 8, 2007. In accordance with MPEP § 713.04, Applicant summarizes herewith the details of the interview with the Examiner.

During the interview, the subject matter of the claims was discussed with particular attention directed to independent claims 1, 15 and 29 in comparison to the prior art cited in the previous Office Action. The Examiner recognized that none of the prior art cited discloses or suggests each of the features of the independent claims, as now amended. In particular, the prior art cited does not disclose or suggest, *inter alia*, a rim disposed at the top edge of a container sidewall with a plurality of flaps connected to the rim, as claimed. Rather, and with particular attention to Buchalski, the disclosed step 89 is spaced downwardly from the opening of the container, so as to protrude from the sidewall at a position between the bottom and the opening. The Examiner suggested that the claims be amended to more clearly recite this feature. No samples or prototypes of the instant invention were exhibited.

Claim Rejections Under 35 U.S.C. 103(a)

In the Non-Final Office Action dated April 17, 2007, the Examiner rejected claims 1-8, 11-14, 17-32, and 34 under 35 U.S.C. § 103(a) as allegedly being obvious in view of Oman (US Patent Number 2,001,810) in combination with Buchalski (US Patent No. 5,816,484). Additionally, the Examiner references Tan (US Patent No. 5,685,478) and takes Official Notice of design choice in further support of this rejection. The Examiner also rejected claims 9, 10, 33,

39, 68 and 76 as being obvious further in view of Suh (US Patent No. 5,106,882). Applicant respectfully traverses these rejections.

As amended, independent claims 1, 15, and 29 recite, *inter alia*, a container having a sidewall projecting upwardly to a top edge, the top edge defining an opening, and a rim encompassing the opening and projecting laterally outwardly from the top edge of the sidewall; the container including a number of flaps integrally connected to the rim along respective fold lines. The Examiner interprets the step (89) of Buchalski, as depicted in Figure 8, to be a “rim” and each living hinge (120a, 122a, 124a, 126a) to be a “fold line”. However, it is clear that the flaps of Buchalski are not and can not be integrally connected to a laterally and outwardly projecting rim (step 89) along a fold line (living hinge 120a, 122a, 124a, 126a), wherein the rim is located at the top edge of a sidewall, as claimed. Instead, and as acknowledged by the Examiner during the formal interview of March 8, 2007, the step (89) of Buchalski is vertically spaced downward from the living hinge and therefore not integrally connected to the flaps (90’, 92’, 94’, 96’) as previously suggested by the Examiner. Indeed, Buchalski states in column 5, lines 20-23, that the “upper linear edge [at the top of each sidewall is] formed into respective linear living hinges 80a, 82a, 84a, 86a.” Hence, Buchalski specifies that the flaps (90, 92, 94, 96) are connected directly to the sidewalls of the container, and not to an outwardly projecting rim, as claimed.

For the convenience of the Examiner, and in an attempt to depict more clearly the container disclosed by Buchalski, Applicant reproduces Fig. 8 of Buchalski below. Also provided is a cross sectional schematic view, in accordance with the Buchalski disclosure as best understood by Applicant, which illustrates two stacked containers of Buchalski, with the inner nested container being shown in phantom.

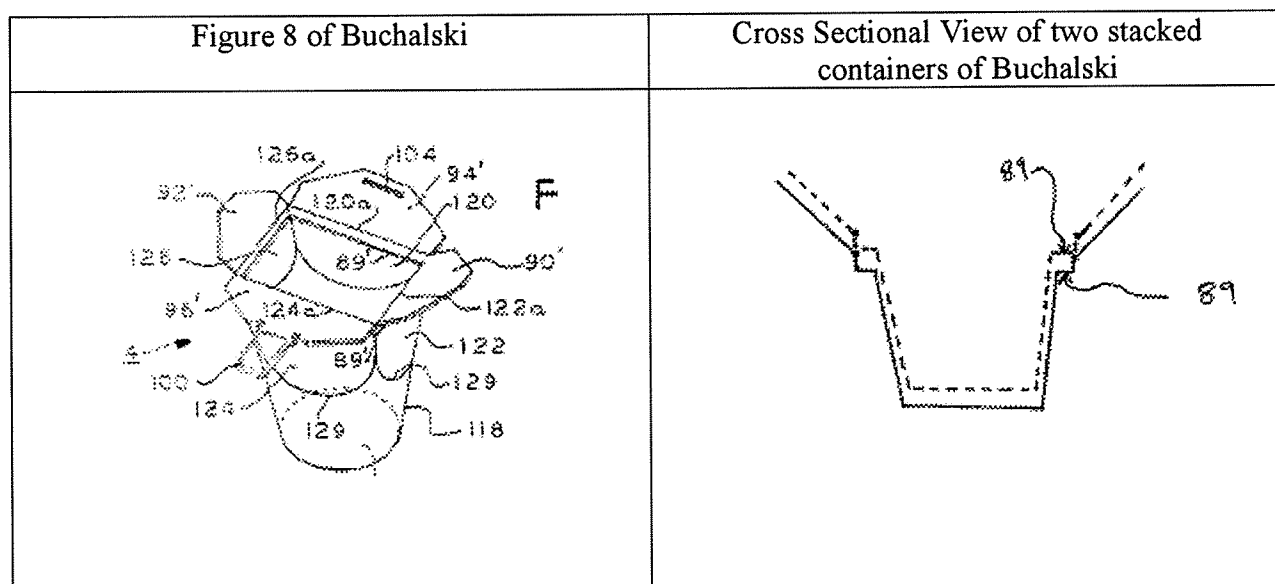


Figure 8 clearly depicts the step (89) spaced vertically from the corresponding hinge wherein the living hinge (120a) is shown spaced from and at a vertically higher location than step (89). In the Office Action, the Examiner suggests that the rim 89 can be interpreted to project laterally outward and then make a vertical turn upward. However, Buchalski explicitly states in column 5, lines 20-23, that the sidewalls terminate at the “upper linear edge formed into respective linear living hinges 80a, 82a, 84a, 86a.” Further, in column 5, line 35 Buchalski states, that “the step 89 is present on the interior and exterior surfaces of the sidewalls” (emphasis added). Thus, and as best understood by Applicant, in order for the step (89) to be present on both the interior and exterior of the sidewall, the step must be located at position between the top and bottom of the sidewall of Buchalski. Accordingly, the only plausible interpretation of the location of the step (89) is illustrated in the cross sectional schematic view provided above, in which the step (89) is spaced vertically below the hinge (120a), so as to be present on both the interior and exterior surfaces of the sidewall. Consequently, the step (89) as specified by Buchalski can not be located at the top edge of the sidewall which defines the opening of the container, and integrally connected to the flaps, as claimed, since the step (89) is necessarily spaced from the hinge.

Further, Buchalski explicitly states in column 5, lines 39-41, that “the external portions of the step 89 of an inner nested container rests on the living hinges of the outer nested container”.

Therefore, and as best understood by Applicant, the step (89) must be configured as illustrated in the cross sectional view provided above, wherein the step is spaced from the hinge so as to provide a nesting feature, which “rests on” the hinge of an outer container. Accordingly, and in direct contrast with the pending claims, the flaps of Buchalski are not integrally connected to the step along the living hinges, and the step is not located at the container opening as claimed in independent claims 1, 15, and 29.

As acknowledged by the Examiner, neither Oman nor Suh even disclose or suggest a container having a rim feature. Accordingly, none of the prior art cited, whether considered separately or in combination, disclose or suggest each and every feature of independent claims 1, 15 and 29. As such, Applicant respectfully submits that claims 1, 15 and 29 are allowable over the prior art of record. Accordingly, Applicant respectfully requests that the rejection to claims 1, 15 and 29 be withdrawn.

Moreover, dependent claims 2-14, 16-28, and 30-34 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claims 2-8, 16-23, 30-32 recite additional features of the flaps, while claims 9-14, 24-28, 33-34 recite additional features of the container. At least for these reasons, dependent claims 2-14, 16-28, and 30-34 are further allowable over the prior art relied upon by the Examiner.

Formal Request for Interview

In the event that the Examiner does not find the application to be in condition for allowance, Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant’s Attorney Daniel Hulseberg may be reached at telephone number (212) 408-2594 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

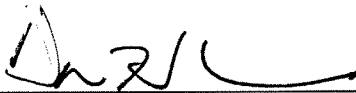
CONCLUSION

On the basis of the foregoing Amendments and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that the previous rejections be withdrawn, and that the currently pending claims 1-34 be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077410.0513. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, Applicant requests such extension and authorizes the charging of the extension fee to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077410.0513.

Respectfully submitted,

July 17, 2007
Date


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